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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1965

No. ~~452~~

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JOHN F. DAVIS, CLERK

TRANSPORTATION-COMMUNICATION
EMPLOYEES UNION,

v.

UNION PACIFIC RAILROAD COMPANY,

Petitioner,

Respondent.

On Petition For Writ of Certiorari to the United States Court
of Appeals for the Tenth Circuit

BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITION FOR CERTIORARI

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Dated at Toledo, Ohio, this
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1965

No. 652

TRANSPORTATION-COMMUNICATION
EMPLOYEES UNION,

Petitioner.

v.

UNION PACIFIC RAILROAD COMPANY,

Respondent.

**On Petition For Writ of Certiorari to the United States Court
of Appeals for the Tenth Circuit**

**BRIEF OF RAILWAY LABOR EXECUTIVES'
ASSOCIATION AS AMICUS CURIAE IN
SUPPORT OF PETITION FOR CERTIORARI**

The Railway Labor Executives' Association submits this brief as *amicus curiae* in support of the petition for certiorari filed herein by the Transportation-Communication Employees Union. The consent of all parties to the case has been obtained and such consents have been filed with the Clerk of the Court.

INTEREST OF THE AMICUS CURIAE

The Railway Labor Executives' Association, on whose behalf this brief as *amicus curiae* is presented, is a voluntary unincorporated association, with which are affiliated the following standard national and international railway labor organizations:

American Railway Supervisors' Association
 American Train Dispatchers' Association
 Brotherhood of Locomotive Firemen and Enginemen
 Brotherhood of Maintenance of Way Employees
 Brotherhood Railway Carmen of America
 Brotherhood of Railway and Steamship Clerks,
 Freight Handlers, Express and Station Employees
 Brotherhood of Railroad Trainmen
 Brotherhood of Sleeping Car Porters
 Hotel & Restaurant Employees and
 Bartenders International Union
 International Brotherhood of Boilermakers, Iron
 Ship Builders, Blacksmiths, Forgers and Helpers
 International Brotherhood of Electrical Workers
 International Brotherhood of Firemen & Oilers,
 Helpers, Roundhouse & Railway Shop Laborers
 International Organization Masters, Mates & Pilots
 of America
 National Marine Engineers' Beneficial Association
 Order of Railway Conductors and Brakemen
 Railway Employees' Department, AFL-CIO
 Railroad Yardmasters of America
 Seafarers' International Union of North America
 Sheet Metal Workers' International Association
 Switchmen's Union of North America
 Transportation-Communication Employees Union

The principal office of said association is located at 400 First Street, N.W., Washington, D.C.

The foregoing organizations affiliated with the Railway Labor Executives' Association represent, for purposes of collective bargaining under the Railway Labor Act, the bulk of the nation's rail employees, and this Court has recognized the Association as the proper party to appear and speak for these affiliated organizations and their railroad employee members. *Interstate Commerce Commission v. Railway Labor Executives' Association*, 315 U.S. 373 (1942); *Railway Labor Executives' Association v. United States*, 339 U.S. 142 (1950); *American Trucking Associations, Inc., et al., v. United States*, 355 U.S. 141 (1957).

Each of these organizations is a party to collective bargaining agreements with nearly every railroad in the United States, governing the rates of pay, rules and working conditions of the craft or class of employees which it represents. Said organizations are under a statutory duty to exert every reasonable effort to make and maintain such agreements and to settle all disputes with respect to their interpretation or application. It is their further function to provide for the selection and compensation of the labor members of the National Railroad Adjustment Board, the administrative tribunal created by the Act for final determination of such disputes in the event they cannot be settled on the property of the carrier or carriers involved; to process such disputes to the Board on behalf of the employees they represent; and to seek enforcement of the awards and orders of the Board in the event of a failure or refusal of the carrier or carriers to comply therewith.

Under the decision of the court below, an organization seeking to enforce a claim that its agreement had been violated, by assignment of work falling within the scope of that agreement to employees in another craft, must face the

prospect of having its agreement re-written, or modified, to reconcile its provisions with possible conflicting provisions in the agreement pertaining to the other craft. Such reconciliation — in effect compulsory arbitration of the subject matter of the agreements — would be effected either by the Adjustment Board or, under the holding below, by the court in an action to enforce an award of the Board in favor of the claimant organization, through a trial *de novo* to which the other organization would be an indispensable party. By the same token, organizations other than the claimant, unaware of the existence of any dispute between themselves and the carrier, would be forced before the Board and the courts to do battle for the retention of provisions in their agreements which had been achieved through voluntary collective bargaining, but which might conflict with the asserted coverage of the claimant organization's agreement. And the function of the Adjustment Board would be expanded from that of interpretation and application of agreements so as to encompass the reconciling and re-writing of conflicting agreements.

The extent to which the organizations comprising the *amicus curiae* Railway Labor Executives' Association can continue to fulfill their foregoing statutory duties and functions, and the procedures to which they must resort to do so, are directly and vitally involved in the issues in this case. Also dependent upon the determination of those issues are the future effectiveness, and the proper function and purpose, of the Adjustment Board, responsibility for the creation, operation and financial support of which is shared by these organizations. The issues in this case are thus of great concern to the *amicus curiae*, and their proper resolution by this Court is a matter of the highest importance not

merely to the petitioner organization but to railroad labor as a whole.

REASONS FOR GRANTING WRIT

I. THE COURT BELOW HAS DECIDED IMPORTANT QUESTIONS WITH RESPECT TO THE HANDLING AND DISPOSITION OF DISPUTES UNDER THE RAILWAY LABOR ACT IN A MANNER IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT.

In this case the organization which is the petitioner before the Court submitted to the National Railroad Adjustment Board a dispute arising from a claim that the respondent carrier had violated its collective bargaining agreement with petitioner by assigning certain work to employees in another craft, represented by a different organization. The court below held that the Board had no right to resolve that dispute without making the second craft a party to the administrative proceedings, and ruling upon its contractual rights to the work in question, as well as those of the craft which had initiated the claim. Implicit in the court's opinion is the premise that in such cases the Board must resolve the "jurisdictional dispute" and award the work in question to one craft or the other, presumably exercising its statutory authority to "interpret" agreements in such a way as to insure elimination of any possible overlapping or conflict in the carrier's obligations to the crafts in question.¹

¹ Separate determination of the rights of the claimant craft under its agreement is condemned as deciding the dispute in a "piecemeal manner."

In *Whitehouse v. Illinois Central R. R.*, 349 U.S. 366, this Court stated that it had "granted certiorari because serious questions concerning the administration of the Railway Labor Act are in issue." (349 U.S., p. 370.) Those same questions are directly presented here. Although the Court's opinion in the *Whitehouse* case does not purport to answer all of the questions discussed there, and presented under the facts of this case, it did plainly state that even in the absence of any notice to the second craft, "The Board has jurisdiction over the *only necessary parties to the proceeding* and over the subject matter." (349 U.S., p. 373; emphasis supplied.) The Court also stated that it was "unquestioned" that if, as here, notice had been given to the second craft, "they could be indifferent to it; they would be within their legal rights to refuse to participate in the present proceeding." (349 U.S., p. 372.)

The decision below is clearly in conflict with these specific holdings in the *Whitehouse* opinion, as well as being at odds with the tenor of this Court's discussion of questions which it refrained from determining in that case.

The holding is also in conflict with this Court's decisions with respect to the limitation of the Adjustment Board's function to that of the interpretation of agreements, as contrasted with prescribing the terms of agreements or making determinations as to their validity (*Elgin, Joliet & Eastern R. Co. v. Burley*, 325 U.S. 711, 723; *Steele v. Louisville & N. R. Co.*, 323 U.S. 192, 205); and with respect to the non-justiciability of jurisdictional disputes in the railroad labor field, and the inability of either the courts or the Board to resolve areas of conflict in agreements of different crafts (*General Committee, B.L.E. v. Missouri-K.-T. R. Co.*, 320 U.S. 323).

II. THE COURT BELOW HAS DECIDED IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

In addition to enlarging the Adjustment Board's function to include arbitration in the major disputes field, i.e., settlement of jurisdictional disputes through "reconciling" agreements rather than interpreting and applying them, the court below has decided a number of important questions with respect to the operation of the statutory machinery for settlement of minor disputes in the railroad industry, and has done so in such a manner as to seriously jeopardize its continued effectiveness. These are questions which have not yet been decided by this Court, although their existence and perplexity was noted more than ten years ago in *Whitehouse v. Illinois C.R. Co.*, 349 U.S. 366.

Thus in a dispute between a carrier and the craft petitioning the Board, with respect to the proper interpretation of the agreement between them, the court below introduces as an indispensable party a second craft whose rights depend not on the interpretation of the contract before the Board, but upon the interpretation of its own separate contract with the carrier. And although in the instant case the second craft was in fact given notice of the pending dispute and an opportunity to participate, its failure to do so, in the court's opinion, renders the Board's award invalid because in arriving at it the Board failed to treat the second craft as if it were a participating party, and did not purport to issue an adjudication as to the second craft's contractual rights.

Furthermore, although jurisdiction of the Board under the Railway Labor Act is predicated upon the existence of

a dispute which remains unsettled after it has been completely handled on the property of the carrier "in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes" (45 U.S.C. Sec. 153 First (i)), the opinion of the court below would force the second craft before the Board for settlement of a dispute which not only had not been handled on the property, but which it did not know existed.

It should also be noted that under the statute (45 U.S.C. Sec. 153 First (h)), the Adjustment Board is composed of four divisions, each of which has jurisdiction only over disputes involving specified crafts and classes of employees, and "whose proceedings shall be independent of one another." This allocation of jurisdiction and functions is clearly calculated to enhance the advantages, frequently noted by this Court, of having these minor disputes referred to and decided by panels of experts peculiarly familiar with the problems and grievances which have customarily arisen with respect to the workers whose claims are being passed upon. In a number of instances a craft which is the petitioner before one division of the Board has charged a carrier with violating its agreement by assignment of work to members of another craft whose grievances and contract claims lie within the jurisdiction of a different division of the Board. Under the decision below, the second craft would be forced to submit to a declaration of its rights by a division having no jurisdiction over its disputes, and composed of members unfamiliar with the problems, customs and practices pertaining to the aspect of railroad operations in which its members were engaged. Jurisdictional objections aside, such a holding goes far to defeat the Congressional objective of having these disputes resolved by experts in their field.

And finally, the decision below would subject both the petitioner craft and the second craft to the vagaries of having their agreements construed in the light of others the negotiation and consummation of which was without notice to or participation by them, and in which their involvement was expressly prohibited by the statutory mandate that the carrier bargain with the certified craft representative and no other. *Virginian Railway v. System Federation No. 40*, 300 U.S. 515.

The manner in which the court below has resolved these issues represents a serious threat to the continued effectiveness of the National Railroad Adjustment Board as an instrumentality for the fair and expeditious settlement of disputes over the interpretation of railroad collective bargaining agreements. It further constitutes a perversion of the Board's statutory function, by extending its jurisdiction to the making of agreements for the parties, instead of interpreting those arrived at by the voluntary processes contemplated by the Railway Labor Act. The continuing frequency of litigation such as this, and the accompanying uncertainty and frustration resulting from the dragging out of these so-called minor disputes, points up the pressing need for a determination of these questions by this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari herein should be granted.

Respectfully submitted,

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Dated at Toledo, Ohio, this
15th day of December, 1965.

CERTIFICATE OF SERVICE

I, Richard R. Lyman, one of the attorneys for the Railway Labor Executives' Association, as *amicus curiae*, do hereby certify that on the 15th day of December, 1965, I served a copy of the brief of Railway Labor Executives' Association as *amicus curiae* in support of petition for certiorari upon all parties of record herein by depositing copies thereof in the United States mails, via airmail, postage prepaid, addressed to Milton P. Kramer, Lester P. Schoene and Martin W. Fingerhut, 1625 K Street, N.W., Washington, D.C., 20006, Attorneys for petitioner, Transportation Communication Employees Union; James A. Wilcox and Harry Lustgarten, Jr., 1416 Dodge Street, Omaha, Nebraska, 68102, and E. G. Knowles and Clayton D. Knowles, 560 Denver Club Building, Denver, Colorado, 80202, Attorneys for respondent, Union Pacific Company.

.....
Richard R. Lyman